

Mr. CONYERS. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

□ 1715

FREE FLOW OF INFORMATION ACT OF 2009

Mr. CONYERS. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 985) to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Free Flow of Information Act of 2009".

SEC. 2. COMPELLED DISCLOSURE FROM COVERED PERSONS.

(a) CONDITIONS FOR COMPELLED DISCLOSURE.—In any matter arising under Federal law, a Federal entity may not compel a covered person to provide testimony or produce any document related to information obtained or created by such covered person as part of engaging in journalism, unless a court determines by a preponderance of the evidence, after providing notice and an opportunity to be heard to such covered person—

(1) that the party seeking to compel production of such testimony or document has exhausted all reasonable alternative sources (other than the covered person) of the testimony or document;

(2) that—

(A) in a criminal investigation or prosecution, based on information obtained from a person other than the covered person—

(i) there are reasonable grounds to believe that a crime has occurred; and

(ii) the testimony or document sought is critical to the investigation or prosecution or to the defense against the prosecution; or

(B) in a matter other than a criminal investigation or prosecution, based on information obtained from a person other than the covered person, the testimony or document sought is critical to the successful completion of the matter;

(3) in the case that the testimony or document sought could reveal the identity of a source of information or include any information that could reasonably be expected to lead to the discovery of the identity of such a source, that—

(A) disclosure of the identity of such a source is necessary to prevent, or to identify any perpetrator of, an act of terrorism against the United States or its allies or other significant and specified harm to national security with the objective to prevent such harm;

(B) disclosure of the identity of such a source is necessary to prevent imminent death or significant bodily harm with the objective to prevent such death or harm, respectively;

(C) disclosure of the identity of such a source is necessary to identify a person who has disclosed—

(i) a trade secret, actionable under section 1831 or 1832 of title 18, United States Code;

(ii) individually identifiable health information, as such term is defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), actionable under Federal law; or

(iii) nonpublic personal information, as such term is defined in section 509(4) of the Gramm-Leach-Bliley Act (15 U.S.C. 6809(4)), of any consumer actionable under Federal law; or

(D)(i) disclosure of the identity of such a source is essential to identify in a criminal investigation or prosecution a person who without authorization disclosed properly classified information and who at the time of such disclosure had authorized access to such information; and

(ii) such unauthorized disclosure has caused or will cause significant and articulable harm to the national security; and

(4) that the public interest in compelling disclosure of the information or document involved outweighs the public interest in gathering or disseminating news or information.

(b) AUTHORITY TO CONSIDER NATIONAL SECURITY INTEREST.—For purposes of making a determination under subsection (a)(4), a court may consider the extent of any harm to national security.

(c) LIMITATIONS ON CONTENT OF INFORMATION.—The content of any testimony or document that is compelled under subsection (a) shall—

(1) not be overbroad, unreasonable, or oppressive and, as appropriate, be limited to the purpose of verifying published information or describing any surrounding circumstances relevant to the accuracy of such published information; and

(2) be narrowly tailored in subject matter and period of time covered so as to avoid compelling production of peripheral, non-essential, or speculative information.

(d) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed as applying to civil defamation, slander, or libel claims or defenses under State law, regardless of whether or not such claims or defenses, respectively, are raised in a State or Federal court.

(e) EXCEPTION RELATING TO CRIMINAL OR TORTIOUS CONDUCT.—The provisions of this section shall not prohibit or otherwise limit a Federal entity in any matter arising under Federal law from compelling a covered person to disclose any information, record, document, or item obtained as the result of the eyewitness observation by the covered person of alleged criminal conduct or as the result of the commission of alleged criminal or tortious conduct by the covered person, including any physical evidence or visual or audio recording of the conduct, if a Federal court determines that the party seeking to compel such disclosure has exhausted all other reasonable efforts to obtain the information, record, document, or item, respectively, from alternative sources. The previous sentence shall not apply, and subsections (a) and (b) shall apply, in the case that the alleged criminal conduct observed by the covered person or the alleged criminal or tortious conduct committed by the covered person is the act of transmitting or communicating the information, record, document, or item sought for disclosure.

SEC. 3. COMPELLED DISCLOSURE FROM COMMUNICATIONS SERVICE PROVIDERS.

(a) CONDITIONS FOR COMPELLED DISCLOSURE.—With respect to testimony or any document consisting of any record, information, or other communication that relates to a business transaction between a communications service provider and a covered person, section 2 shall apply to such testimony or

document if sought from the communications service provider in the same manner that such section applies to any testimony or document sought from a covered person.

(b) NOTICE AND OPPORTUNITY PROVIDED TO COVERED PERSONS.—A court may compel the testimony or disclosure of a document under this section only after the party seeking such a document provides the covered person who is a party to the business transaction described in subsection (a)—

(1) notice of the subpoena or other compulsory request for such testimony or disclosure from the communications service provider not later than the time at which such subpoena or request is issued to the communications service provider; and

(2) an opportunity to be heard before the court before the time at which the testimony or disclosure is compelled.

(c) EXCEPTION TO NOTICE REQUIREMENT.—Notice under subsection (b)(1) may be delayed only if the court involved determines by clear and convincing evidence that such notice would pose a substantial threat to the integrity of a criminal investigation.

SEC. 4. DEFINITIONS.

In this Act:

(1) COMMUNICATIONS SERVICE PROVIDER.—The term "communications service provider"—

(A) means any person that transmits information of the customer's choosing by electronic means; and

(B) includes a telecommunications carrier, an information service provider, an interactive computer service provider, and an information content provider (as such terms are defined in sections 3 and 230 of the Communications Act of 1934 (47 U.S.C. 153, 230)).

(2) COVERED PERSON.—The term "covered person" means a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain and includes a supervisor, employer, parent, subsidiary, or affiliate of such covered person. Such term shall not include—

(A) any person who is a foreign power or an agent of a foreign power, as such terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(B) any organization designated by the Secretary of State as a foreign terrorist organization in accordance with section 219 of the Immigration and Nationality Act (8 U.S.C. 1189);

(C) any person included on the Annex to Executive Order No. 13224, of September 23, 2001, and any other person identified under section 1 of that Executive order whose property and interests in property are blocked by that section;

(D) any person who is a specially designated terrorist, as that term is defined in section 595.311 of title 31, Code of Federal Regulations (or any successor thereto); or

(E) any terrorist organization, as that term is defined in section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(3) DOCUMENT.—The term "document" means writings, recordings, and photographs, as those terms are defined by Federal Rule of Evidence 1001 (28 U.S.C. App.).

(4) FEDERAL ENTITY.—The term "Federal entity" means an entity or employee of the judicial or executive branch or an administrative agency of the Federal Government with the power to issue a subpoena or issue other compulsory process.

(5) JOURNALISM.—The term "journalism" means the gathering, preparing, collecting,

photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. CONYERS. I ask unanimous consent to revise and extend my remarks and that all Members have 5 legislative days to revise and extend their remarks as well and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. I yield myself such time as I may consume.

Members of the House, the Free Flow of Information Act creates a qualified privilege to protect journalists from being compelled to disclose confidential sources or other than nonpublic information that they have collected in the course of their reporting.

This is a very important and sensitive matter. I want to point out that the gentleman from Virginia, a senior member of the Judiciary Committee, has worked on and authored this bill for a number of years. It has been modified and brought before us. I think that it's of critical importance and continues to deserve the overwhelming support of this body, which it has received.

Right at this moment, a Pulitzer Prize-winning reporter from the Detroit Free Press, David Ashenfelter, faces possible contempt charges for refusing to disclose sources who exposed serious prosecutorial misconduct. The bill has been carefully tailored, as will be explained.

There's one other person I would like to single out for their excellent testimony in the last Congress, and that is Pulitzer Prize winner William Safire, who gave some very important insights into the scope and significance of this bill.

We think that this is critical. It's supported by editorial boards, media companies, organizations, associations, News Corp, and all broadcast networks. We urge that this measure be given the careful consideration that it is due.

I would also like to single out the gentleman from Indiana, MIKE PENCE, a distinguished member of the committee, and BOB GOODLATTE of Virginia, whose efforts were vitally important in strengthening the bill and ensuring that it is a truly bipartisan measure that comes before the House today.

Madam Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, the United States has enjoyed a free press for over 200 years because it is guaranteed to us in the Constitution. Our Founders understood that a free press protects and perpetuates our democracy.

There has been no Federal media shield law to protect journalists' sources because there has been no evidence of a need. No more than 17 journalists during the past 25 years have been jailed for refusing to testify before a grand jury. They were not singled out for punishment. Every American called to testify before a grand jury must cooperate or face this very same consequence.

Nor is there any evidence that potential sources have withheld critical information from reporters because of a fear of being identified. Just look at the scandals that are regularly uncovered—from Watergate to the recent mistreatment of soldiers at Walter Reed Medical Center.

In the 37 years since the Supreme Court ruled that the first amendment does not shield a reporter from testifying in a grand jury proceeding, the media have had no problem exposing corruption and injustice.

Unfortunately, this bill raises serious law enforcement and national security concerns. However well-intentioned, H.R. 985 will compromise the work of the Justice Department and other Federal agencies charged with crime-fighting, intelligence-gathering, and national security matters.

The bill we are considering today creates a press "privilege" under which courts cannot compel reporters to provide information they need to fight crime.

Protecting anonymous sources should never be more important than protecting the American people or solving crimes that can save lives. While confidentiality is vital to the work of a reporter, national security is essential to the preservation of a free nation.

For example, the exception to the privilege in this bill—to prevent a terrorist attack or imminent bodily harm—will not help in investigations after the attack has already occurred.

Under the bill, law enforcement officials could have obtained information identifying a reporter's source on September 10, 2001, for example, to prevent the terrorist attacks, but could not have acquired that same information on September 12 to track down the terrorists.

Similarly, officials could acquire information regarding a reporter's source to prevent the molestation of a child, but they could not get that same information to bring a sexual predator to justice after the assault.

Concerning classified information leaks, former Attorney General Michael Mukasey wrote in an editorial following the House vote in 2007: "Leaking classified information is itself a crime, but in order for the government to get source information

from a journalist in a leak investigation, it must show that the leak caused significant articulable harm to national security, that the information was properly classified, and the person who leaked it was authorized to have it.

"Thus, a would-be leaker of classified information could simply give it to someone not authorized to have it, urge that person to leak it, and thereby prevent the government from investigating the crime.

"This bill effectively cripples the government's ability to identify and prosecute leakers of classified information. Ironically, a bill styled as a 'reporter's shield' would have the perverse effect of shielding would-be leakers."

Look at the range of crimes where a reporter would be able to hide his source: Corporate and financial crimes—very relevant these days; human trafficking, gun and drug trafficking; gang activity; and other criminal activity that might not result in a direct risk of imminent death or significant bodily harm, even though we all have a strong interest in preventing such crimes.

H.R. 985 creates a privilege that allows reporters to avoid a civic duty. The bill goes beyond promoting a free press. It confers on the press a privileged position. It exempts journalists from the same responsibilities that all others have in a criminal investigation. This new privilege has no precedent in American legal history.

This bill is not about protecting the public's right to know about corruption or malfeasance that already exists. It's about giving a reporter a special privilege at the expense of our national crime-fighting efforts.

To quote a high-ranking official from the Office of the Director of National Security during last Congress' debate, the media shield bill "makes it very difficult to enforce criminal laws involving the unauthorized disclosure of classified information and could seriously impede other national security investigations and prosecutions, including terrorism prosecutions."

As a former reporter, I sympathize with journalists not wanting to reveal their sources. But as a Member of Congress I have a responsibility to see that law enforcement and intelligence officials who keep us safe can do their jobs. This bill creates serious law enforcement and national security problems without sufficient justification.

Madam Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Without objection, the gentleman from Virginia will control the time of the gentleman from Michigan.

There was no objection.

Mr. BOUCHER. Madam Speaker, I yield myself 6 minutes.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. I want to begin by extending my personal appreciation to

the chairman of the House Judiciary Committee, the gentleman from Michigan (Mr. CONYERS) for his determined effort to bring the Free Flow of Information Act to the floor of the House today and for the strong support in the last Congress and again in this Congress that he and his outstanding staff are providing to protect the public's right to know.

The bill that is before the House today is identical to the bill that passed the House in the last Congress by a vote of 398-21. It is a bipartisan measure which, this year, as in the previous Congress, I was pleased to introduce and partner with our Republican colleague, the gentleman from Indiana (Mr. PENCE), and 49 other cosponsors in the House.

I want to acknowledge Mr. PENCE's leadership and his deep commitment to protecting freedom of the press. It has been a tremendous privilege to have this opportunity to work with him toward the passage of this needed measure.

I also want to thank our Virginia colleague, BOB GOODLATTE, for his leadership and his strong support of the bill in this Congress. Mr. GOODLATTE and I have worked together to promote a range of national policies. We cochair, for example, the Congressional Internet Caucus. It is also a pleasure to work with him in this Congress in order to promote passage of the Free Flow of Information Act.

I want to comment for a moment today on the fact that in 2007 on this floor this bill received the outstanding vote of 398-21. That sweeping majority occurred by virtue of the careful work that was done by the House Judiciary Committee 2 years ago when the committee considered this legislation.

Members on both sides of the aisle participated. They offered good suggestions for improving the legislation—for the addition of circumstances when disclosure of information could be compelled, including numerous provisions of compelled disclosure for the purpose of protecting the national security. Those national security protections are deeply embedded in the bill that we are considering today.

It was an excellent committee process, rewarded on this House floor by a vote of 398-21 in favor. The measure was not considered on the Senate floor in the last Congress and so we begin the process again today with House consideration.

The Free Flow of Information Act protects the public's right to know. This is really not about protecting journalists, as my friend from Texas would suggest. The privilege is conferred upon journalists, but it is for the purpose of protecting the public's right to know.

The bill promotes the flow of information to the public about matters of large public interest where public disclosure is needed so that corrective action can be taken in order to prevent or correct a deep harm to society, so

that legislation can be introduced to correct that harm, so that a lawsuit can be filed or a criminal prosecution be launched once the public is apprised of what in fact is happening that constitutes a harm to society.

□ 1730

Journalists serve as public watchdogs, bringing sensitive matters to light, and the bill before us enables them to do a better job of it.

Often, the best information that can be obtained about matters of large public interest that involve corruption in government or misdeeds in a large organization like a corporation or a large public charity will come from a person on the inside of that organization who knows what is happening, who knows about the harm to the public interest that is occurring, and feels a public responsibility to pick up a telephone and call a reporter and bring that critical information to public scrutiny. But that person has a lot of lose.

If his or her identity becomes known, that person can become punished, often by the individual who is responsible for the wrongdoing inside that organization. And so, in the absence of the ability of reporters to extend a pledge of confidentiality to protect the identity of that person on the inside, that information will never come to public light, and there will never be an opportunity for the public to take corrective action.

This is why we call our bill the Free Flow of Information Act. Passing this measure, conferring upon journalists a limited privilege to refrain from revealing confidential source information, will ensure that that vital information flows freely to the public so that corrective action in this Congress or in other legislative forums or in the courts can thereafter be taken.

The measure extends in Federal court proceedings a qualified privilege for reporters to refrain from testifying or producing documents, and a qualified privilege to refrain from revealing the identity of confidential sources.

Throughout the bill, there are provisions protecting the national security; and where it is appropriate to protect national security, disclosure of information can be compelled, disclosure of source information can be required, and reporters can in fact be required to testify in Federal court proceedings. The bill very carefully balances the need to protect the national security with the need to assure the free flow of information.

Madam Speaker, it is a carefully written measure which strengthens freedom of the press and protects the public's right to know. I strongly urge its approval today by the House.

I reserve the balance of my time.

Mr. SMITH of Texas. Madam Speaker, I yield 3 minutes to the gentleman from Iowa (Mr. KING), a member of the Judiciary Committee.

Mr. KING of Iowa. Madam Speaker, I thank the gentleman for yielding and for his leadership on this issue.

This is one of those issues that has a lot of support across the country because there are a lot of reporters across the country that are interested in making sure they have the last full measure of protection they can possibly have for their particular profession. And all of us, in whatever profession we are, see ourselves as the consummate professionals without regard to competing professions.

I would ask the question, what are we trying to fix here? What is the problem that this legislation seeks to address? And one of those is the lack of conformity between the States; I recognize that. But we only have, in the last 25 years, 17 incidents of reporters that have been incarcerated for their refusal to divulge their sources. The most public of those would be the case of Judith Miller in the Scooter Libby investigations that were conducted by the Special Prosecutor, Patrick Fitzgerald, Madam Speaker. And I asked myself during that entire investigation, why didn't they just ask Robert Novak? That would have answered the question.

And if I ask the question today, what was truth and what was fiction in all that? That may be a matter of record, but it is not a matter of public knowledge, even among us here. So it turned out it was Richard Armitage and not Scooter Libby. Scooter Libby was still prosecuted and convicted. I think that Judith Miller's 85 days in jail, if she had that to do over again, she still testified and she still had her agreement with her source.

This goes on and on, 200-plus years, and now we have journalists that have to have special protection without having at least a breadth of statistical data that would support this advocacy that is part of this bill.

And I will tell you, as one who has been in the public eye for some time today, Madam Speaker, that I don't think I am treated objectively by all of the media. I don't think I need to bring a law to this Congress and ask that, for example, to give a Member of Congress a cause of action to bring litigation against a journalist if they happen to be unethical or inaccurate or untruthful. We just go ahead and take that, because that is part of being in the public eye.

The protections are there. There is already sufficient judicial restraint on moving to bring to cause these journalists who speak. Their sources are protected substantially by the tradition and the effects of the court.

And I will submit also another argument, Madam Speaker, and that is that special professional protection is preserved by the States for certain professions. Priests and pastors, for example. They are considered to have a certain privilege with the people that they counsel and minister to, and we try not to crack into that source. And there will be other examples.

For example, a medical doctor or any type of a doctor who has patients. The

patient and the doctor relationship is protected in confidentiality. And we have attorney-client relations, too, that we are very well familiar with in this Congress. All of those are professional relationships. All of those are relationships with people who are skilled.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SMITH of Texas. I yield the gentleman an additional 2 minutes.

Mr. KING of Iowa. I thank the gentleman from Texas.

Madam Speaker, all of those professions that I mentioned are professions where we have people that are trained, that are essentially certified, whether it is by their denomination, by their education, or by their licensing, and those privileges are preserved for clear reasons. This is a privilege that is preserved for the sake of protecting the journalist only, and without an abuse of that confidentiality at this point, without a judicial abuse.

Seventeen cases in 25 years, I would make the argument that this is a solution in search of a problem. It is something that I think sends a message out to the journalistic world. And maybe those of us who will stand up against it will be subject to a certain amount of public criticism. I can face that. I have faced a lot of it. It is part of the price of being in the public eye. Part of the price of being a journalist then is to on a rare occasion, out of the thousands of journalists, 17 in a quarter of a century have been brought forward and said it is in the interests of the court that you go ahead and divulge your source, or at least divulge the information.

And I know that there has been an effort made to tighten this legislation up a little bit, and I appreciate the gentleman's work and due diligence on this. One of the words that was added to the definition of a covered person is the word a person who regularly, the word "regularly" gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information.

This definition of a covered person is tightened up because they have to be regular rather than irregular in their behavior; but I think this covers about anybody that is a journalist, unless they are listed in the exemptions rather than the definition of the bill, Madam Speaker.

So I will submit that the level of professionalism that has been demonstrated, although there are many high-quality professionals in the journalistic business, has not risen to the level where I am willing to give that kind of professional special protection, especially because we have had national secrets that have been divulged into the national and international media arena, done so out of this posturing of it is a public service to divulge national secrets. And I will submit, Madam Speaker, that that is not in our national interest, and I oppose this bill.

Mr. BOUCHER. Madam Speaker, this is a deeply bipartisan measure with bipartisan participation in the construction, committee consideration and drafting of the legislation.

I am pleased now to recognize for 5 minutes the principal Republican sponsor of the measure, who has long been committed to freedom of the press and promoting the public's right to know, the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I thank the gentleman for yielding.

Madam Speaker, I come to the floor today in support of the Free Flow of Information Act of 2009. I do so with a profound sense of humility and with a sense of privilege about being able to come to the floor today in support of this thoughtful and bipartisan measure that may, may well, be a lasting contribution to the vitality of liberty in this Nation.

The Constitution of the United States provides: Congress shall make no law abridging the freedom of speech or of the press. Not since those words were adopted has this body needed to legislate to ensure the freedom of the press. Not until today. We do so because, sadly, the free and independent press in this country is under fire. In recent years, more than 30 journalists have been subpoenaed, questioned, or held in contempt for failure to reveal their confidential sources.

For a journalist, maintaining the assurance of confidentiality of a source is sometimes the only way to bring forward news of great consequence to the Nation. Being forced to reveal sources chills the reporting of the news and restricts the free flow of information to the public.

As a conservative who believes in limited government, I believe the only check on government power in real-time is a free and independent press. A free press ensures the flow of information to the public. And, let me say, during a time when the role of the government in our lives and in our enterprises seems to grow every day, ensuring the vitality of a free and independent press is more important than ever.

In order to maintain this charge, I coauthored the Free Flow of Information Act with my colleague from Virginia, Congressman RICK BOUCHER. I would like to take a moment to thank my partner in this legislation. He is truly the gentleman from Virginia. For over 4 years, we have worked on this issue in a spirit of bipartisanship. RICK BOUCHER is a champion of the first amendment. It has been my great privilege to work with him.

I also want to commend the chairman of this committee, Chairman CONYERS, Vice Ranking Member BOB GOODLATTE, and Representatives COBLE and BLUNT, without whose efforts in the last Congress the bipartisan com-

promise in this bill would not have been possible.

The bill is known as the Federal Media Shield. It provides a qualified privilege of confidential sources to journalists, enabling them to shield sources in most instances from disclosure. But the bill is not about protecting journalists; it is about protecting the public's right to know.

It received wide bipartisan support in the last Congress, and I hope in this, because we addressed the very real and legitimate concerns about how a privilege for journalists could impact security at the national level. The Federal Government, we acknowledge, is tasked with the tremendous responsibility of protecting our country, and we must also keep national security concerns in the forefront. I submit, the Free Flow of Information Act does just that.

Many Americans will assume that the fining and imprisonment of journalists is something confined to tyrannical regimes in far corners of the world. They might be surprised to learn that the United States does not have a Federal law on the books that prevents that from occurring. More than three-fourths of State Attorneys General have written Congress in support of this legislation. In fact, 49 States and the District of Columbia had already recognized a journalist's privilege to protect confidential sources.

It is important to emphasize, this bill only provides a qualified privilege; meaning, the disclosure of a source's identity may be required in certain situations, as described by my colleague from Virginia.

With this I close: Long ago, Thomas Jefferson warned, "Our liberty cannot be guarded but by the freedom of the press nor that limited without danger of losing it." Jefferson's words ring into this chamber today.

The passage of the Free Flow of Information Act I believe is necessary and consistent with that charge to not only explicitly and fully provide for the freedom of the press in our Nation but protect the liberty of future generations.

With the bipartisan support of my colleagues and Congress and this new administration, let us seize this opportunity to put a stitch in this tear in the first amendment, freedom of the press, and let us do our part to ensure the vitality of a free and independent press for ourselves and our posterity.

I urge my colleagues to join me and our bipartisan support for the Free Flow of Information Act of 2009.

Mr. SMITH of Texas. Madam Speaker, I yield 2 minutes to the gentleman from Texas (Mr. POE), who is also a member of the Judiciary Committee and a member of the Crime Subcommittee. And I am yielding him 2 minutes in the hopes that he will reconsider his position.

Mr. POE of Texas. I thank the gentleman for yielding. I have the greatest

respect for the ranking member, my friend, Mr. SMITH from Texas, and I appreciate his legal analysis of this legislation. But I do rise in support of the Free Flow of Information Act.

This act is a Federal shield law that would protect the identities of reporters' confidential sources. By protecting the sources of reporters, we protect the public interest and the free flow of information to the public. Forty-nine States and D.C. have some form of protection for reporters' confidential sources, but there is no Federal standard in place. This lack of consistency actually weakens State shield laws.

Madam Speaker, if reporters back in Texas are worried about reporting the whole story to the public because someone might slap a subpoena in their face, the public suffers. Whistleblowers and other potential sources are more hesitant to come forward with information.

Even though I am a former prosecutor, prosecutors should not make their criminal cases based upon confidential information that is given to reporters by forcing those reporters before grand juries to reveal the names of those sources.

This bill protects the first amendment; in fact, it encourages the first amendment, while making appropriate exceptions for some serious criminal investigations.

□ 1745

I want to thank my colleague from Virginia for introducing this important piece of legislation that supports the first amendment provision of a free press and encourages free speech by citizens. Therefore I urge the adoption of this legislation.

Mr. BOUCHER. Madam Speaker, at this time, I'm pleased to yield 3 minutes to the vice ranking member of the House Judiciary Committee, a distinguished Republican Member of this House and a good friend with whom I'm pleased to serve in the Virginia delegation, the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. I thank the gentleman for yielding.

Madam Speaker, I rise in support of H.R. 985, the Free Flow of Information Act, which will encourage whistleblowers by protecting journalists' confidential sources. This bipartisan bill will bolster the free press as a very important check on government power.

I had concerns with this legislation last year when we considered it in the Judiciary Committee, and I worked with my good friends, Representatives BOUCHER and PENCE, to have many of these items addressed before it reached the House floor.

For example, the bill now requires that in order to receive the protections of the media shield law, a journalist must be engaged in the "regular" practice of journalism for "a substantial portion of the person's livelihood" or "for substantial financial gain." This will help ensure that an individual who

has no journalistic experience cannot attempt to protect himself by creating a blog overnight.

In addition, the bill contains a broader exception that allows compelled disclosure of information when national security is at stake, when there are leaks of classified information, and when the journalist was an eyewitness to a criminal act or tort.

This legislation will enhance the freedom of the press and thus provide for a more informed and engaged citizenry. In addition, the improvements to the bill will help ensure that the interests of justice and national security are protected.

It is for these reasons that I support the Free Flow of Information Act and urge my colleagues to support it as well. I want to thank all those who have worked on this measure on both sides of the issue. I think we have created an improved bill and one that I am very pleased and proud to support.

Mr. SMITH of Texas. Madam Speaker, we just have one more speaker on this side, so I will reserve the balance of my time.

Mr. BOUCHER. Madam Speaker, at this time, I'm pleased to yield 2 minutes to the gentleman from Kentucky (Mr. YARMUTH).

Mr. YARMUTH. Thank you for yielding. And I want to congratulate my friend, Mr. BOUCHER and also Mr. PENCE for this terrific piece of legislation.

Madam Speaker, I rise as a proud member of the Society of Professional Journalists in strong support of the Free Flow of Information Act.

As a former journalist, I have seen the assurance of anonymity put a frightened insider at ease and turn a reluctant source into an eye-opening wealth of information.

In my hometown of Louisville, we witnessed what happens when a source's identity is not protected. There, Jeffrey Wigand, the famous tobacco whistleblower, was victimized by threats and intimidation, ultimately losing his job, his family and his home. His selfless efforts are largely seen as heroic, but for many, the lesson is: If you have sensitive information that would benefit the American public, keep it to yourself.

We also know that if it had not been for the confidence of sources that they wouldn't be revealed that the incident at the Watergate and the more recent scandals at Walter Reed Hospital might never have come to light.

In a time when we have seen how the inner workings of corporations and government can have catastrophic effects on our country as a whole, it is as important as ever to protect this conduit to information, the anonymous source. Until we can guarantee that security, good journalists will be jailed, conscience-driven and law-abiding Americans will be silenced, and information that is critical to all of our lives will be locked away from the American people.

I would like to respond quickly to two things that were said by my colleague from Iowa (Mr. KING). One is that there is no need to give special protection to the media. As Mr. PENCE pointed out, the Founding Fathers decided to give special protection to the media. They granted them freedom of the press. And there is no freedom of the press without the ability to protect your sources. And secondly, there was a question raised as to whether there was an abundance of information that would demonstrate a need. We don't know how many thousands of potential sources have been silenced by fear that they might be revealed in the press. It is kind of like saying "we haven't been attacked since 9/11." We don't know. But we do know, as in the case of Jeffrey Wigand, what happens when a source is revealed.

So once again, as someone who has spent many years as a writer and editor in the United States and who is very grateful for the protections of the first amendment, I strongly urge my colleagues to support this important legislation.

Mr. SMITH of Texas. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, Congress should not legislate in the absence of a problem. And here, there is no problem. The Supreme Court ruled in 1972 that no reporter's privilege is found in the Constitution or the common law.

In the past 37 years, thousands of stories about malfeasance and scandals have been reported by local, national and international news outlets in the United States. These stories have covered a variety of subjects, many with the participation of anonymous sources.

Yet the premise of H.R. 985 is contradicted by the facts. These stories were written despite no Federal shield bill. In fact, let's examine a real-world example illustrating how the media might use this privilege. Supporters of H.R. 985 often cite the so-called "BALCO case" as a justification for the bill. But what really happened? BALCO was an organization involved in the illegal distribution of steroids to professional athletes. Reporters for the San Francisco Chronicle wrote more than 100 stories on the case without benefit of illegally leaked grand jury testimony. But an attorney for one of the defendants eventually leaked testimony, which the reporters used in other stories.

During an investigation, the lawyer stated under oath that he had not leaked information. In fact, he claimed the government leaked it, thereby creating a pretext for him to request that the court dismiss the case against his client. He was eventually exposed and prosecuted. Nothing was done to the reporters who refused to identify their source. In other words, the BALCO reporters used illegally-leaked information they didn't need to report on the

case, all the while protecting a disreputable attorney who perjured himself before a Federal Court. Yet this case is cited as a modern-day justification for a shield bill to protect reporters and "the public's right to know."

But what happened in BALCO pales in comparison to what may happen to crime-fighting and national security if this bill becomes law. The Justice Department has developed internal guidelines that govern how they interact with reporters during investigations. For example, these guidelines require U.S. Attorneys to obtain information through alternative sources when possible. But the biggest difference between the guidelines and the bill is that the guidelines are administered flexibly. In an age of terrorism when the timely acquisition of information is indispensable to crime-fighting, U.S. Attorneys should not have to spend time satisfying the multipart test of H.R. 985.

The entire structure of the bill inflexibly requires the Department of Justice to meet certain threshold requirements before they can acquire some information. Exceptions in the bill to provide greater access to such information are limited and do not cover a wide range of Federal criminal investigations. And the prospective nature of some of the exceptions, to prevent a terrorist attack or imminent bodily harm, will not help in investigations after an attack has already occurred.

We have seen time and time again in the last few weeks where rushing legislation through without benefit of a hearing or expert testimony has led to unintended consequences. Regarding this bill, we still haven't heard what the Attorney General or the Director of National Intelligence thinks about it. We do know that in the last administration, all these individuals opposed it.

Today, only 20 minutes are allowed in opposition to this bill. Yet it might well lead to heinous crimes that could have been prevented or solved. Terrorism hasn't gone away since the election. Neither has domestic crime. The primary function of government is to protect people. And this bill greatly complicates the ability of the government to prevent and solve crime. The press doesn't need H.R. 985 to do its job. And the public can't afford to have the government make it easier for terrorists and other criminals.

Madam Speaker, I hope my colleagues will oppose this well-intentioned but ultimately misguided piece of legislation.

With that, I will yield back the balance of my time.

Mr. BOUCHER. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I strongly urge the passage of the Free Flow of Information Act. It is legislation which confers upon reporters a privilege either to refrain from testifying in certain circumstances or to refrain from reveal-

ing confidential information sources. But the purpose of our legislation is not to protect reporters. It is to protect the public's right to know, to ensure that sensitive information that can only come from an inside source reporting on something that is happening to the disadvantage of government, because of corruption in a bureau or agency, or a harm to society that is occurring because of misdeeds in a large organization like a corporation or a large public charity can, because of an act of conscience by that inside person, come to public scrutiny in a way that the public can then take corrective action by passing a statute, by initiating a lawsuit, or by initiating a criminal prosecution. And if that inside person is not assured confidentiality, if there is an opportunity for that person's identity to be exposed, that person is going to be very reluctant to share information with a reporter to bring that information to public light. That person has a tremendous amount to lose if his or her identity is revealed. That person can be punished by firing from his or her job or through more subtle means.

So, in the absence of the ability of the reporter to extend the pledge of confidentiality, there is the very real risk that that vital information will never come to public light.

This legislation is carefully balanced. It has protections for the national security which are deeply embedded within the measure. And those were placed there through the careful bipartisan work of the House Judiciary Committee when we had our extensive markup of this measure 2 years ago. The bill before us today is identical to that measure. It passed the House 2 years ago by a vote of 398-21. And it is deserving today of the same strong support by the House of Representatives.

So, Madam Speaker, I strongly encourage the passage of the Free Flow of Information Act. I thank the bipartisan cosponsors and all of those who have participated with us as this measure has been written.

Ms. PELOSI. Madam Speaker, I rise today in strong support of legislation that helps to ensure freedom of the press. This right is a cornerstone of our democracy, and a principle that we cherish and promote around the world.

Arthur Hays Sulzberger once said, "Freedom of the press . . . belongs to everyone—to the citizen as well as the publisher . . . The crux is not the publisher's 'freedom to print'; it is, rather, the citizen's 'right to know.'"

The right to know, as provided by a free press, keeps our nation informed and holds those of us in government accountable.

It is appropriate that we debate media shield legislation in the same week that we will debate the federal budget. Because this legislation will make clear to confidential sources that they will be protected in most circumstances when they bring forward public evidence of waste, fraud and abuse in government and in the private sector.

News organizations are facing serious economic challenges across the country. Our poli-

cies should enable our news organizations to thrive and engage in the news gathering and analysis the American people expect.

Essential to this effort is the media shield law we debate today.

Nearly all states have recognized the importance of a free press with some form of a press shield protecting the confidentiality of journalists' sources. However, that protection is lacking at the federal level and in federal courts.

This has hampered the essential work of the press. In recent years, more than 40 reporters have been subpoenaed for the identities of confidential sources in nearly a dozen cases.

The federal government's policies and actions should protect and preserve the press's ability to speak truth to power. This legislation does so with appropriate national security safeguards, striking a careful balance between liberty and security.

Freedom of the press has long been an issue of importance to many of us in this body. When I was Ranking Member of the Intelligence Committee, I encouraged President Clinton to veto an Intelligence Authorization bill that would have made it easier to prosecute journalists. We fixed those provisions and passed a bill that both protected our nation and protected our fundamental freedoms.

Madam Speaker, today we have an opportunity to strengthen and protect the freedom of the press that has served our nation so well and to protect all journalists.

As we protect and defend our nation, we must now protect and defend the Constitution by enabling our press to be free, as our Founders envisioned. I urge my colleagues to give this legislation the strong bipartisan vote it deserves.

Mr. WU. Madam Speaker, I rise today in strong support of the Free Flow of Information Act, and I thank the chairman for his work on this important legislation.

Madam Speaker, our nation's founders understood that a free and independent press is the lifeblood of a functioning democracy.

Confidential sources supply journalists with critical information on matters of public importance. The freedom of the press to cultivate relationships with confidential sources facilitates this vital exchange.

These relationships should be protected, because it is fundamentally in the interest of our republic that the free exchange of ideas and information remain unadulterated.

We must never silence those who inform our democracy.

I urge my colleagues to join me in supporting this important legislation.

Mr. BOUCHER. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 985.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ALIEN SMUGGLING AND TERRORISM PREVENTION ACT OF 2009

Ms. JACKSON-LEE of Texas. Madam Speaker, I move to suspend the rules